(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 270 of 1997

(Memorandum of Appeal under Section 374 Cr.P.C.)

APPELLANTS in Jail. :

1. Phooldas S/o Chinta Das Manikpuri, aged 50 years, r/o Village Chouriya.
2. Aartidas S/o Phooldas Manikpuri aged 24 years, resident of Village Chouriya.
3. Mohan Kunwar W/o Phooldas Manikpuri, aged 45 years, r/o Village Chouriya.

All -Police Station Baradwar district Bilaspur (MP).

Versus

RESPONDENTS : The State of Madhya Pradesh, Through District Magistrate, Bilaspur (MP).

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374 OF Cr.P.C.

827

Filed on 5-2-97

by Shri H.S. Patel

Advocate

Rm. A.R.

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(54)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA 270/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (1)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 270 of 1997

Appellants : Phooldas and others.

Vs.

Respondent : The State of Madhya Pradesh

Shri Yogeshwar Sharma, learned counsel for the appellants.
Shri U.N.S. Deo, learned G.A. for the State/respondent.

ORAL JUDGMENT
(Delivered on 13th January 2006)

L.C.Bhadoo, J

By this appeal the accused/appellants namely Phooldas, Aartidas and Mohan Kunwar have questioned the legality of judgment of conviction and sentence dated 22.01.1997 passed by II Additional Sessions Judge, Bilaspur in Sessions Trial No. 227/1991 whereby the learned Additional Sessions Judge after holding the accused/appellants guilty for the commission of the offence of murder has convicted them under Section 302 and 201 read with Section 34 of the IPC and sentenced each of them to undergo imprisonment for life and one year's rigorous imprisonment respectively. It was further directed that both the sentences shall run concurrently.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (27)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. The case of the prosecution in brief necessary for disposal of this appeal is that Kishorilal gave merg intimation (P-21) to the Station House Officer, Police Station-Bharadwar on 23.03.1991 at about 4.00 p.m. that on that day his son namely Jeevan Sahu went towards Sone Nadi and he returned at about 11.00 p.m. He informed him that he saw one body buried in the river bed. On receiving this information he along with Kotwar, Teejram, Dayadas, Kheekdas and Dhaniram went towards river and saw a body buried in the river bed. The head and right hand of the body were visible and one yellow coloured check sari was on the dead body. Portion of the body below the neck was covered by sand. Receiving this report B.C.Singh, In-charge Police Station registered the merg intimation at No. 10/91 and left for the river bed where after giving notice to the Panchas (P-2), the body was exhumed from the river bed and Panchanama (P-3) was prepared. The postmortem on the body was got conducted by Dr. S.P. Gupta- P.W.11 who after conducting postmortem, prepared the post mortem report (P-17). Based on the merg intimation and the Panchanama, Dehati Nalishi (P-13) was recorded and vide document of P-14 Crime No. 43/91 under Section 201 and 302 read with Section 34 of the IPC was registered. During investigation on the memorandum (P-10) given by Phooldas, memorandum (P-11) given by Mohan Kunwar and the memorandum (P-12) given by Aartidas bloodstained Rampa, Tabbal, earthen tiles and pickaxe were taken into custody from the house of Phooldas under P-5. Under P-6 the plain soil and bloodstained soil were taken into possession from the place of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (3)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

occurrence i.e. the house of Phooldas. The clothes which were lying on the body of the deceased were also taken into possession under P-7. The wooden ladder was taken into possession under P-8. These articles were sent for examination to the Forensic Science Laboratory, Sagar from where the report (P-23) was received. After completion of the investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Shakti who in turn committed the case to the Sessions Judge, Bilaspur from where the learned II Additional Sessions Judge, Bilaspur received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused persons examined as many as 14 witnesses. The learned Additional Sessions Judge recorded the statements of the accused persons under Section 313 of the Cr.P.C. However, they denied the prosecution evidence appearing against them and stated that they are innocent and have been falsely implicated in the above crime and at the relevant time they were in Kashmir. Kishorilal and Phoolbai have implicated them in a false case. Phoolbai had sold their land while they were in jail. The accused persons examined the defence witnesses D.W. 1 Brijlal and D.W. 2 Ganeshram regarding the plea of alibi that they were at the relevant time in Kashmir. The learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused persons convicted and sentenced each of the accused persons as mentioned in paragraph 1 of this judgment.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (4)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. We have heard learned counsel for the accused/appellants Shri Yogeshwar Sharma and Shri U.N.S. Deo, learned Govt. Advocate on behalf of the State.

5. Mr. Sharma argued that in the present case there is no eyewitness and there are no circumstantial evidence to connect the accused with the crime in question, therefore, their conviction is bad.

6. On the other hand, Mr. U.N.S. Deo supported the judgment of the trial Court.

7. Having heard the learned counsel for the parties we have perused the judgment of the trial court as well as the evidence available on record.

8. It is true that there is no eyewitness or ocular evidence in this case to connect the accused persons with the murder of Khikhdas. Even the circumstantial evidence is also not clinching in order to connect the accused with the crime in question. P.W. 1 Ghasnin Bai, wife of the deceased, has turned hostile. P.W. 2 Phool Bai has also turned hostile. P.W. 3 Sudarshan, even though in examination-in-chief has stated that his house is in front of the house of the accused Phooldas and in his statement he has stated that about 14 months prior to the date on which this evidence was recorded i.e. 23.07.1992 he was sleeping in the night, after hearing the cries of Ghashnin Bai he woke up and saw that Phooldas and Aartidas were carrying the body of the husband of Ghashnin Bai and she was weeping. On enquiry from Ghashnin Bai, she informed him

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (57)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that his brother and father have murdered her husband. She had not disclosed that with which weapon her husband was murdered. They were carrying the dead body towards Sone Nadi. He had not seen how the body was tied. Mohan Kunwar was carrying lantern in her hand and in paragraph 4 of his evidence he has stated that she was having torch in her hand and not the lantern. It is true that the night was dark. He was not able to see properly in the night because his eyesight was weak and he was not having any torch or light in his hand. Ghashnin Bai was screaming that her husband has been murdered and it appeared to him that they were carrying the body and he had not seen the body by going closer and he had not gone inside the house of Phooldas. The above evidence of Sudarshan has not been supported by Ghashnin Bai (PW-1) because she has not stated therein that her husband was murdered by his father and brother and they had taken the body from the house to Sone Nadi, therefore, the evidence of this witness is not worth reliance to the extent that Ghashnin Bai informed him that his father Phooldas and brother Aarti Das have murdered her husband and were carrying the body of her husband. This witness has further stated that he himself did not saw the body and had not gone inside the house of Phooldas, therefore, the evidence of this witness is not clinching to the effect that he had seen the body of Kheekh Das being carried by Phooldas and Aarti Das towards the river. PW-4 Kishorilal who gave the Merg intimation has stated that one day his son Jeevanlal went towards river and came and informed that there is one body buried in the river bed then he along with Kotwar,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (6)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Teejram, Dayadas, Kheekdas and Dhaniram went towards that side and body was identified by Dhaniram after seeing the face to be of Kheekhdas but Dhaniram has not been examined. PW-7 Ashwani Kumar, the Police constable who was on duty called the doctor for post mortem on the dead body has stated that the body was putrefied and was beyond recognition. Only based on the clothes the body was identified. PW-11 Dr. S.P. Gupta who conducted the post mortem on the body has stated that body was exhumed and there were maggots in the whole body. There was no skin on the head, neck and chest because the meggats had taken away the skin of the body. Skin of the stomach and legs was also putrefied. There were few hair on the skull and the remaining part of the body was putrefied. The lung, heart and upper layer of the heart was also putrefied. The full pant of black colour, red colour lungi, yellow print Sari, one jute bag, blue colour sari, black colour blanket and blue underwear were handed over to the constable. He was not able to give cause of death. His report is P-17. Therefore, in view of the above evidence of the doctor the body was not identifiable on account of putrefaction and only the clothes were available.

9. The other circumstance regarding the involvement of the accused persons in the crime which has been pressed into service by the prosecution is the recovery of Tabbal, Rampa and earthen tiles from the accused persons which were blood stained. The report of the FSL is to the effect that the blood was present on these articles but there is no finding of the serologists that it was the human blood and that too of the blood group of the deceased and such articles

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are normally found in the houses of agriculturists in rural areas, therefore, merely from the recovery of these articles the accused cannot be connected with the commission of murder of the deceased.

10. In view of the foregoing discussion we are of the considered opinion that there is not even iota of circumstantial evidence to connect the accused persons with the murder of Kheekhdas. Even the prosecution has not been able to prove the case beyond reasonable doubt that the body which was recovered was in all probabilities of Kheekhdas, therefore, the finding of the trial Court convicting the accused persons under section 302 of the IPC for committing the murder of Kheekhdas cannot be sustained as the prosecution has not been able to establish the offence u/s 302 of the IPC against the accused/appellants. Therefore, the offence under section 201 of the IPC causing disappearance of the evidence of a crime with an intention to screen them from the legal punishment goes away automatically.

11. In the result, the appeal succeeds. The conviction and sentence awarded under sections 302 and 201 read with section 34 of the IPC are set aside. Mohan Kunwar is already on bail, she need not surrender to the bail bonds. Her bail bonds are discharged. Accused Phooldas and Aartidas are in custody. They be released forthwith if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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